

<sup>2</sup> The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief can be granted.

Defendants Frank Eric Talbert ("Talbert") and the Proteus Group, LLC ("Proteus") (collectively, "Defendants") waived service of process of the complaint and admitted to the jurisdiction of this Court over them and the subject matter of this action.

The Secretary and Defendants have agreed to resolve all matters in controversy in this action between them (except for the imposition by the Secretary of any penalty pursuant to ERISA § 502(*l*), 29 U.S.C. § 1132(*l*), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA § 502(*l*) in connection with the violations alleged in this matter, the "applicable recovery amount" shall include all amounts paid in accordance with this Consent Order and Judgment.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendants Talbert and Proteus Group are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001 *et seq.*
2. Defendants Talbert and Proteus are jointly and severally liable to the Plan in the total amount of \$64,704.72, representing the following principal losses to the Plan and associated lost opportunity costs:<sup>3</sup>
  - a. A total of \$62,728.65 in unremitted employee salary deferral contributions and employee loan repayments withheld during the period from January 4, 2012, through November 18, 2016 (\$56,886.51 in principal losses and \$3,654.14 in lost opportunity costs); and

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<sup>3</sup> The lost opportunity costs, which represent the amount of money the Plan would have earned on the assets if the assets had been remitted to the Plan, are based on the Internal Revenue Code § 6621(a) rate and have been calculated through September 13, 2016, the date that Defendant Talbert filed for bankruptcy protection.

b. A total of \$1,976.07 in lost opportunity costs as a result of \$156,030.06 in untimely employee salary deferral contributions and employee loan repayments withheld during the period from January 4, 2012, through November 18, 2016.

3. In reliance on the representations made by Defendant Talbert in the documents provided by him to the Secretary (including his bankruptcy filings), which show that he is currently unable to immediately pay the Plan the total remaining restitution amount of \$64,704.72, the Secretary agrees to forbear immediate collection of the entire restitution amount and agrees that Defendant Talbert shall pay the restitution amount in accordance with the schedules set forth below beginning 10 days after the date the Court approves this Consent Order and Judgment:

Payment Year	Payment Amount	Duration	Total Annual Payment
Initial Payment	\$2,133.64	Once	
Year 1	\$500 per month	12 months	\$8,133.64
Year 2	\$600 per month	12 months	\$7,200.00
Year 3	\$700 per month	12 months	\$8,400.00
Year 4	\$800 per month	12 months	\$9,600.00
Year 5	\$900 per month	12 months	\$10,800.00
Year 6	\$1,000 per month	12 months	\$12,000.00
Year 7	\$1,102.24 per month	7 months	\$7,715.68
Year 7	\$855.40 per month	1 month	\$855.40
<b>Total</b>			<b>\$64,704.72</b>

a. In restoring the monies, Defendant Talbert shall send the monies directly to the Plan's participants in accordance with Exhibit A, attached hereto and made a part hereof. A copy of each check shall be submitted within three days of issuance to EBSA Regional Director Jeffrey Monhart, 230 S. Dearborn St., Room 2160, Chicago, IL 60604 ("EBSA Regional Director").

b. If Defendant Talbert's reportable gross income<sup>4</sup> exceeds \$60,000 in any calendar year prior to the full repayment of losses in Paragraph 3(a) above, Defendant Talbert shall distribute all of his reportable gross income in excess of \$60,000 to the Plan participants on a pro rata basis on or before May 15 of the next calendar year, but Defendant Talbert shall not pay any Plan participant more than he or she is owed as identified in Exhibit A, in accordance with the following schedule:

- i. 20% of Defendant Talbert's reportable gross income in excess of \$60,000 up to \$80,000;
- ii. 40% of Defendant Talbert's reportable gross income in excess of \$80,000 up to \$100,000;
- iii. 60% of Defendant Talbert's reportable gross income in excess of \$100,000 up to \$120,000;
- iv. 80% of Defendant Talbert's reportable gross income in excess of \$120,000 up to \$140,000; and
- v. 100% of Defendant Talbert's reportable gross income in excess of \$160,000;

c. Defendant Talbert shall pay to the Plan participants on a pro rata basis up to the amounts the Plan participants are owed 100% of any bequest, inheritance, gifts (over \$500), lottery and gambling winnings over \$500, or proceeds of any life insurance policy Defendant Talbert may receive within 30 days of receipt.

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<sup>4</sup> For purposes of paragraph 3(b), "reportable gross income" shall be defined as the "total income" (i.e., 2017 IRS Form 1040, line 22) reported on Defendant Talbert's individual federal income tax return filings.



d. Nothing herein shall prevent Defendant Talbert from making payments to the Plan participants on an accelerated basis.

4. If it is found that the documents Defendant Talbert provided regarding his financial status are untrue, the sum of \$64,704.72 plus accrued interest from the date the Court approves this Consent Order and Judgment (minus payments made pursuant to this Consent Order and Judgment) shall immediately become due and payable by him together with post-judgment interest pursuant to 28 U.S.C. § 1961.

5. Should Defendant Talbert fail to pay any of the installment payments described in Paragraph 3(a) above or Exhibit A on or before the dates set forth therein, the entire amount of the balance remaining shall become due and payable immediately with no further notice or demand required by the Secretary to Defendant Talbert.

6. Defendant Talbert agrees that he will notify the EBSA Regional Director within seven days of any change of his name, residence, telephone number, mailing address or employment until the amounts recited in this Consent Order and Judgment are repaid.

7. Defendant Talbert agrees to submit to the EBSA Regional Director his annual federal tax returns on or before May 15th of each year until the amounts recited in this Consent Order and Judgment are repaid, and if he is not required by federal law to file an annual federal tax return he will provide a statement under oath that such filing is not required.

8. Defendant Talbert agrees to provide the EBSA Regional Director a Declaration of Financial Status executed under penalty of perjury on or before May 15th of each year until the amounts recited in this Consent Order and Judgment are repaid.

9. Defendant Talbert shall take appropriate actions to locate each such participant or beneficiary of the Plan to notify each such participant or beneficiary of his/her entitlement to a

restoration of losses. Appropriate actions include complying with the guidance in EBSA Field Assistance Bulletin 2014-01, Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans (Aug. 21, 2014) available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2014-01>.

10. Defendants Talbert and Proteus shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to employee benefit plans subject to ERISA, except to the extent necessary for Defendant Talbert to restore losses owed to the Plan participants pursuant to this Consent Order and Judgment.

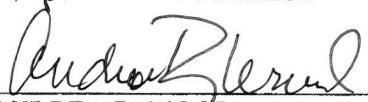
11. Each party agrees to bear his or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

12. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Judgment and Order.

13. Nothing in this Order is binding on any government agency other than the United

States Department of Labor.

DATED April 23, 2018


  
ANDREA R. WOOD  
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this consent order and judgment:

**FOR THE SECRETARY OF LABOR:**

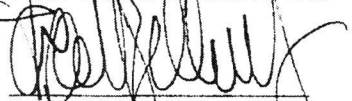
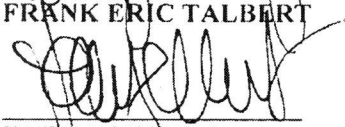
**KATE O'SCANNLAIN**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

  
KEVIN M. WILEMON  
Trial Attorney  
Office of the Solicitor  
U.S. Department of Labor  
230 S. Dearborn St. Rm 844  
Chicago, IL 60604

DATED: 4/18/2018

**FOR THE DEFENDANTS:**

  
FRANK ERIC TALBERT  
  
THE PROTEUS GROUP, LLC

DATED: 4/6/18

DATED: 4/6/18

By: FRANK TALBERT

Its: Co Manager



Participant	Collins, Raymond	Crawford, Susan	Finck, Douglas	Gran, Williams	Hally, Ewa J.	Han, Jenny	Lalseta, Viraj	Lawrence, Mark D.	Pasky, Rodney	Scheihofer Kelly	Spencer, Marsha	Swift- Widacha, Iwona	Williams, Denise J.	Total Restoration Amounts
Restoration Dates														
Percentages *	0.28%	12.85%	7.31%	23.11%	7.17%	18.26%	0.07%	4.13%	15.44%	7.32%	3.33%	0.01%	1.08%	
4/30/2018		\$306.70	\$174.48	\$551.59	\$171.13	\$435.83		\$98.57	\$368.52	\$174.71	\$79.48		\$25.78	\$2,386.80
4/30/2018	\$189.65						\$49.01					\$8.18		\$246.84
5/31/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
6/30/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
7/31/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
8/31/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
9/30/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
10/31/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
11/30/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
12/31/2018		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
1/31/2019		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
2/28/2019		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
3/31/2019		\$64.25	\$36.55	\$115.55	\$35.85	\$91.30		\$20.65	\$77.20	\$36.60	\$16.65		\$5.40	\$500.00
4/30/2019		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
5/31/2019		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
6/30/2019		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
7/31/2019		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
8/31/2019		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
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11/30/2019		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
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1/31/2020		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
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3/31/2020		\$77.10	\$43.86	\$138.66	\$43.02	\$109.56		\$24.78	\$92.64	\$43.92	\$19.98		\$6.48	\$600.00
4/30/2020		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00
5/31/2020		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00
6/30/2020		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00



Participant	Collins, Raymond	Crawford, Susan	Finck, Douglas	Gran, Williams	Hally, Ewa J.	Han, Jenny	Lalseta, Viraj	Lawrence, Mark D.	Pasky, Rodney	Scheihofer , Kelly	Spencer, Marsha	Swift- Widacha, Iwona	Williams, Denise J.	Total Restoration Amounts
Restoration Dates														
7/31/2020		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00
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12/31/2020		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00
1/31/2021		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00
2/28/2021		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00
3/31/2021		\$89.95	\$51.17	\$161.77	\$50.19	\$127.82		\$28.91	\$108.08	\$51.24	\$23.31		\$7.56	\$700.00
4/30/2021		\$102.80	\$58.48	\$184.88	\$57.36	\$146.08		\$33.04	\$123.52	\$58.56	\$26.64		\$8.64	\$800.00
5/31/2021		\$102.80	\$58.48	\$184.88	\$57.36	\$146.08		\$33.04	\$123.52	\$58.56	\$26.64		\$8.64	\$800.00
6/30/2021		\$102.80	\$58.48	\$184.88	\$57.36	\$146.08		\$33.04	\$123.52	\$58.56	\$26.64		\$8.64	\$800.00
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4/30/2022		\$115.65	\$65.79	\$207.99	\$64.53	\$164.34		\$37.17	\$138.96	\$65.88	\$29.97		\$9.72	\$900.00
5/31/2022		\$115.65	\$65.79	\$207.99	\$64.53	\$164.34		\$37.17	\$138.96	\$65.88	\$29.97		\$9.72	\$900.00
6/30/2022		\$115.65	\$65.79	\$207.99	\$64.53	\$164.34		\$37.17	\$138.96	\$65.88	\$29.97		\$9.72	\$900.00
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Participant	Collins, Raymond	Crawford, Susan	Finck, Douglas	Gran, Williams	Hally, Ewa J.	Han, Jenny	Lalseta, Viraj	Lawrence, Mark D.	Pasky, Rodney	Scheihofer , Kelly	Spencer, Marsha	Swift- Widacha, Iwona	Williams, Denise J.	Total Restoration Amounts
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1/31/2023		\$115.65	\$65.79	\$207.99	\$64.53	\$164.34		\$37.17	\$138.96	\$65.88	\$29.97		\$9.72	\$900.00
2/28/2023		\$115.65	\$65.79	\$207.99	\$64.53	\$164.34		\$37.17	\$138.96	\$65.88	\$29.97		\$9.72	\$900.00
3/31/2023		\$115.65	\$65.79	\$207.99	\$64.53	\$164.34		\$37.17	\$138.96	\$65.88	\$29.97		\$9.72	\$900.00
4/30/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
5/31/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
6/30/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
7/31/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
8/31/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
9/30/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
10/31/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
11/30/2023		\$128.50	\$73.10	\$231.10	\$71.70	\$182.60		\$41.30	\$154.40	\$73.20	\$33.30		\$10.80	\$1,000.00
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4/30/2024		\$141.64	\$80.57	\$254.73	\$79.03	\$201.27		\$45.52	\$170.19	\$80.68	\$36.70		\$11.90	\$1,102.24
5/31/2024		\$141.64	\$80.57	\$254.73	\$79.03	\$201.27		\$45.52	\$170.19	\$80.68	\$36.70		\$11.90	\$1,102.24
6/30/2024		\$141.64	\$80.57	\$254.73	\$79.03	\$201.27		\$45.52	\$170.19	\$80.68	\$36.70		\$11.90	\$1,102.24
7/31/2024		\$141.64	\$80.57	\$254.73	\$79.03	\$201.27		\$45.52	\$170.19	\$80.68	\$36.70		\$11.90	\$1,102.24
8/31/2024		\$141.64	\$80.57	\$254.73	\$79.03	\$201.27		\$45.52	\$170.19	\$80.68	\$36.70		\$11.90	\$1,102.24
9/30/2024		\$141.64	\$80.57	\$254.73	\$79.03	\$201.27		\$45.52	\$170.19	\$80.68	\$36.70		\$11.90	\$1,102.24
10/31/2024		\$141.64	\$80.57	\$254.73	\$79.03	\$201.27		\$45.52	\$170.19	\$80.68	\$36.70		\$11.90	\$1,102.24
11/30/2024		\$109.92	\$62.53	\$197.68	\$61.33	\$156.20		\$35.33	\$132.07	\$62.62	\$28.48		\$9.24	\$855.40
<b>Total Restored</b>	\$189.65	\$8,282.84	\$4,711.87	\$14,896.22	\$4,621.63	\$11,770.01	\$49.01	\$2,662.11	\$9,952.30	\$4,718.32	\$2,146.45	\$8.18	\$696.15	\$64,704.72